The Law of Agency and Athlete Agents

Chapter 8

Management Contexts, Relevant Laws, and Cases

MANAGEMENT CONTEXT	MAJOR LEGAL ISSUES	RELEVANT LAW	ILLUSTRATIVE CASES
Negotiation of business transactions	Creation of agency relationships	Agency law Contract law	*Clark Advertising Agency*
Employer/principal liability for employee/agent acts	Authority of agents to act Duties and responsibilities of agents/principals	Agency law, contract law, tort law	*Jones* *Simms*
Student-athletes' amateur status	NCAA eligibility Dealings with agents	Agency law UAAA SPARTA	*U.S. v. Piggie*
Player representation	Regulation of athlete agents	UAAA SPARTA Professional player association rules	*Alabama v. Goggins* *Hilliard v. Black*

Agency Defined

Simply:

A relationship between parties in which one party agrees to act as a representative of the other party.

Legal Review

- What is your image of athlete agents?
- Do you think of high-powered, famous agents who have negotiated multimillion-dollar contracts for famous clients?
- Do you think of the movie *Jerry Maguire* starring Tom Cruise *or* the HBO Shows *Arliss* starring Robert Wuhl *or Ballers* starring Dwayne Johnson?

Agency Relationships

- Types:
  1. Employee and employer
  2. Principal and agency
  3. Principal and independent contractor
- Examples in the sport industry:
  - Pro athlete and athlete agent
  - University and a general contractor building a new stadium

Creating an Agency Relationship

- Mutual consent
- Informal or formal agreements
- Basic contract principles apply
- Both parties must have legal capacity to enter into the agreement

Authority in Agency Relationships

Actual authority: express	Formal written or oral agreement is made between the parties.
Actual authority: implied	Agency relationship is implied from the conduct of the parties.
Apparent authority	Third party relies on conduct of the principal suggesting that agent has authority, so principal is estopped from denying agency relationship.
Ratification	No actual agency exists, but the principal accepts or ratifies the unauthorized acts of the agent.

Fiduciary Relationship

Fiduciary—A person who acts primarily for the benefit of another.

Agent must act for the principal's benefit in all matters connected with the agency relationship—loyalty and good faith.

Both agent and principal owe duties to the other.

Summary of Duties in an Agency Relationship

DUTIES OF THE PRINCIPAL TO THE AGENT	DUTIES OF THE AGENT TO THE PRINCIPAL
Duty of compensation and reimbursement	Duty of cooperation
Duty to provide safe working conditions	Duty of loyalty (good faith)
Duty of performance (reasonable care and skill)	Duty of accounting (for funds and property)
	Duty of obedience (to follow instructions)

Contractual Liability of Principal and Agent

Classification of principals:

Disclosed, unidentified, or undisclosed

Principal is always liable for an agent's authorized acts.

Legal Issues Related to Athletes and Athlete Agents

- Relationship between the agent and the athlete once a relationship is created
- Interactions of agents with student-athletes in an attempt to secure a relationship
- Relationships between agents and agencies when competing for clients or when agents leave one agency for another

Student-Athletes and Agents—Those Who Need to Understand the Law and Legal Issues

- Athlete agents
- University compliance officers
- Student-athletes
- Professional athletes
- Employees of the NCAA enforcement staff
- Contract negotiators for a professional sport team

Athlete Agent Regulation—Uniform Athlete Agents Act (UAAA)

- Adopted by majority of states and territories
- Agents must register
- Intended to regulate athlete agents and protect student-athletes
- Notifies educational institutions when an agency contract is signed by a student-athlete
- Establishes civil and criminal penalties
- Grants civil remedies to educational institution when harmed by agent's prohibited conduct

UAAA Requirements

- Registration
- Disclosures
- Notifications
- Penalties and remedies

Agent Registration

- UAAA requires agents to register and disclose training, experience, and education—in each state in which they have contacted a student-athlete.
- Safe harbor, if athlete initiates contact or communication. Agent must register within 7 days of contact.

Disclosure

- All agency contracts must be in a recorded form and signed by the student-athlete.
- Due to possible loss of intercollegiate eligibility:
  - Contract must contain a warning to student-athletes
  - Student-athlete can cancel contract within 14 days (although cancellation may not restore eligibility)

Eligibility Rules—NCAA

Student-athletes lose their eligibility if they:

Enter into an agreement with an agent or retain an agent for purpose of securing a professional playing contract

Accept transportation or other benefits from an agent

~~Agree (orally or in writing) to be represented by an agent for the purpose of marketing their athletic ability or reputation*~~

*NCAA Interim NIL Policy has suspended enforcement temporarily

Notification Rule

- Both the agent and the student-athlete must notify the athletic director about an agency agreement.
- Protects institutions from penalties resulting from allowing ineligible players to participate; penalties can include:
  - Loss of scholarships
  - Prohibition from championship events
  - Probation
  - Forfeiture of tournament winnings or other revenue

Examples of Prohibited Conduct

An athlete agent, trying to convince a student-athlete to enter into a contract, may not:

- Give any materially false or misleading information or make a false promise/representation
- Offer anything of value to a student-athlete before the student-athlete enters into the agency contract
- Offer anything of value to any individual other than the student-athlete or another registered agent

Legal Review

- Assume you are your school's starting running back.
- How would you react if you were approached by an agent who promised perks like cash, an expensive car, and the ability to work out at an NFL team's training camp—if only you would sign with his agency?
- Would you be tempted to sign? Why or why not?

Sport Agent Responsibility and Trust Act (SPARTA)

Supplements the UAAA (but not as comprehensive)

Provides some protections to student-athletes in states with no form of athlete agent regulation

Professional Athletes and Agents

- Primary job: contract negotiation
- Primary skill: being an effective negotiator
  - Usually express agency relationship
  - Other types of relationships: when the agent serves as financial consultant or endorsement representative

Agents for Professional Players Associations

Certification process—Varies significantly among player associations. All have fees to be certified. All have exams, some require a background check.

Restrictions on agents—To protect pro athletes from a breach of agency agreement, breach of fiduciary duty, or fraud. May also protect agents from client raiding.

Enforcement & Appeals

Disciplinary action by players associations, with appeals going to arbitration.

Competitive Advantage Strategies
Law of Agency and Athlete Agents

Apply basic contract principles when establishing or dealing with agency relationships.

Put agreements in writing.

Educate yourself and employees about legal restrictions on athletes and agents, as well as those imposed by NCAA and other associations.

Conduct seminars for student-athletes to help them understand what is permissible.

Legal Review

- Did you know that approximately half of all athlete agents do not represent a single active player?
- Does this change your impression of agents, as discussed earlier?

Legal Review

- Imagine that you are the agent for a professional basketball player who is weighing two free agency options:
  - One is for a lot of money playing for a small-market team.
  - The other is for less money playing for a larger-market team, where he'll get more exposure.
- What do you recommend, and why?